

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JUDICIAL COUNCIL

In the Matter of the Review of the new
Plan of the United States District Court
for the Western District of Virginia
in Implementation of
the Criminal Justice Act

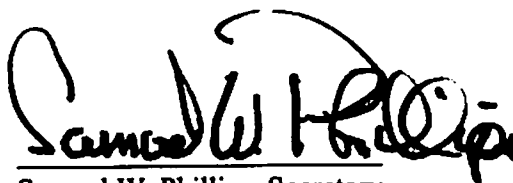
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No. 230

ORDER

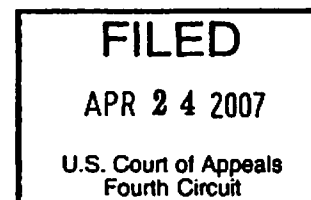
The Plan of the United States District Court for the Western District of Virginia, which is attached to and made a part of this Order, is hereby approved by the Judicial Council of the Fourth Circuit, and it is so ORDERED.

FOR THE COUNCIL:

A handwritten signature in black ink, appearing to read "Samuel W. Phillips", is written over a horizontal line.

Samuel W. Phillips, Secretary

Date: April 24, 2007



UNITED STATES DISTRICT COURT

FOR THE

WESTERN DISTRICT OF VIRGINIA

CRIMINAL JUSTICE ACT PLAN

2007

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UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 (“the CJA”), 18 U.S.C. § 3006A, and the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, Guide to Judiciary Policies and Procedures (“the CJA Guidelines”), the United States District Court for the Western District of Virginia adopts this Criminal Justice Act Plan (“the Plan”) for furnishing representation for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives.

1. The objective of the Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of the Plan is to particularize the requirements of the CJA, 18 U.S.C. § 3599 (relating to counsel for capital defendants) and the CJA Guidelines in a way that meets the needs of the Western District of Virginia.

B. Compliance.

1. The Court, its Clerk, and all appointed attorneys must comply with the CJA Guidelines.
2. The Plan and the CJA Guidelines must be made available by the Clerk through the Court’s Web public site.

III. DEFINITIONS

- A. “Representation” includes giving counsel and investigative, expert, and other services.
- B. “Appointed attorney” includes private attorneys, the Federal Public Defender, and staff attorneys of the Federal Public Defender’s Office for the Western District of Virginia.

IV. PROVISION OF REPRESENTATION

A. Circumstance.

- 1. Mandatory. Representation must be provided for any financially eligible person who:
 - a. is charged with a felony or with a Class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
 - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - d. is under arrest, when such representation is required by law;
 - e. is entitled to appointment of counsel in parole proceedings;
 - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;

- j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
 - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel.
2. Discretionary. Whenever a judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:
- a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
 - b. is seeking relief, other than to set aside or vacate a death sentence under 28 U.S.C. §§ 2241, 2254, or 2255;
 - c. is charged with civil or criminal contempt who faces loss of liberty;
 - d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission that has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or otherwise face loss of liberty in a proceeding before this Court;
 - e. is proposed by the United States attorney for processing under a pretrial diversion program;
 - f. is held for international extradition in this district under Ch. 209 of Title 18, United States Code;
 - g. Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA.
3. Particular Counsel. A defendant does not have the right to the appointment of any particular attorney.

- B. When Counsel Shall Be Provided. Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a judge, when they are formally charged or notified of charges if formal charges are sealed, or when a judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.
- C. Number and Qualifications of Counsel.
1. Number.
 - a. Noncapital cases. More than one attorney may be appointed in any case determined by the Court to be extremely difficult.
 - b. Federal Capital Prosecutions. Pursuant to 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom shall be knowledgeable in the law applicable to capital cases. Pursuant to 18 U.S.C. § 3599, if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.
 - c. Habeas Corpus Proceedings. Pursuant to 18 U.S.C. § 3599, a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 or § 2255 is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers may consider appointing at least two attorneys.
 2. Qualifications.
 - a. Qualifications for appointed counsel shall be determined by the Court consistent with the objective criteria adopted in paragraph VII and Appendix A.
 - b. Capital cases. Pursuant to 18 U.S.C. § 3599, at least one of the attorneys appointed must have been admitted to practice in this Court for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in this Court. Pursuant to 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Pursuant to 18 U.S.C. § 3005, in appointing counsel in federal capital prosecutions, a judge may consider the recommendation of the Federal Public Defender.

- c. Capital cases: Attorney Qualification Waiver. Pursuant to 18 U.S.C. § 3599, the presiding judge, for good cause, may appoint an attorney who may not qualify, but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

D. Eligibility for Representation.

1. Fact-finding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a judge after making appropriate inquiries concerning the person's financial condition.
2. Change in Eligibility.
 - a. Subsequent Ability to Pay. At any time after appointment, an appointed attorney must advise the presiding judge if the attorney obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication.
 - b. Subsequent Inability to Pay. If the presiding judge finds at any stage of the proceedings, including an appeal, that a person who previously did not have counsel appointed under the CJA is financially unable to pay counsel whom he or she had retained, the presiding judge may appoint counsel as provided in the CJA, including the previously retained counsel, and authorize such payment as therein provided, as the interests of justice may dictate.
3. Partial Eligibility: Partial Payment of Reimbursement. If at the time of the appointment or at any time thereafter the presiding judge finds that the person is financially able to obtain counsel or to make partial payment for the representation, or that funds are available for payment from or on behalf of a person furnished representation, the presiding judge shall take appropriate action, which may include terminating the appointment of counsel, ordering partial payment by the person furnished representation, or permitting an appointed attorney to continue to represent the party with all or part of the cost of representation paid by the person furnished representation.

V. FEDERAL PUBLIC DEFENDER’S OFFICE

A. Establishment.

1. The Federal Public Defender for the Western District of Virginia, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender for this district.
2. The Federal Public Defender’s Office shall be capable of providing legal services throughout the district.

B. Supervision of Federal Public Defender’s Office. The Federal Public Defender is responsible for the supervision and management of the Federal Public Defender’s Office. Accordingly, the Federal Public Defender is to be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the Federal Public Defender.

C. Training of CJA Panel. The Federal Public Defender is responsible for the periodic training of the CJA Panel.

D. Management of CJA Panel. The Federal Public Defender is not responsible for the systematic distribution of cases to and for the management of the CJA Panel.

VI. PRIVATE ATTORNEYS

A. Establishment of CJA Panel. The existing, previously established, CJA Panel is hereby recognized.

B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act for the United States District Court for the Western District of Virginia is found at Appendix A of this CJA Plan.

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. § 2254

To represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under 28 U.S.C. § 2254, the presiding judge shall appoint a qualified member or members of the CJA Panel, or the Federal Public Defender’s Office with the consent of the Federal Public Defender, or a qualified attorney recommended by the Federal Public

Defender, or a state or county public defender, or any other attorney who qualifies for appointment pursuant to 18 U.S.C. § 3599.

VIII. DUTIES OF APPOINTED COUNSEL

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA must conform to the highest standards of professional conduct, including but not limited to the provisions of this Court's Rules of Disciplinary Enforcement and the Code of Professional Responsibility, adopted by the Virginia Supreme Court, and to the extent not in conflict with federal law. This Court's Rules of Disciplinary Enforcement and the Code of Professional Responsibility shall constitute the disciplinary rules of this Court, except as otherwise provided by specific rules of the Court and applicable federal law.
- C. No Receipt of Other Payment. Appointed attorneys must not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the Court.
- D. Continuing Representation. Once an attorney is appointed under the CJA, the attorney must continue the representation until the matter is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation/pretrial services officers in this district, and those acting on their behalf, must promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and must, in such cases in which the person indicates that he or she is not able, notify the Federal Public Defender who must discuss with the person the right to representation and right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (CJA Form 23) and arrange to have the person promptly presented before a judge of this Court for determination of financial eligibility and appointment of counsel.

- B. Pretrial Services Interview. Recognizing the importance of the advice of counsel for persons subject to proceedings under 18 U.S.C. § 3142, et seq., prior to their being interviewed by a pretrial services/probation officer, and with due regard for the importance of affording the pretrial services officer adequate time to interview the defendant and verify information prior to the bail hearing, the officer must, before interviewing a defendant, notify the defendant that the defendant has the right to speak with a lawyer before answering any questions, and that a lawyer will be appointed to represent the defendant if the defendant cannot afford a lawyer. If the defendant does not speak English, an interpreter shall be provided.
- C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke supervision, the United States attorney or the probation officer, as appropriate, immediately must mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

X. MISCELLANEOUS

- A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.
- B. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this Court.

XI. EFFECTIVE DATE

This Plan shall become effective when approved by the Judicial Council of the United States Court of Appeals for the Fourth Circuit.

This Criminal Justice Act Plan and its Appendix, the Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act for the United States District Court for the Western District of Virginia is hereby

APPENDIX A.

PLAN FOR THE COMPOSITION, ADMINISTRATION, AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT FOR THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA PANEL

1. Approval. The Court shall establish a panel of private attorneys for each of the divisions of the Court (hereinafter collectively referred to as the “CJA Panel”) who are eligible and willing to be appointed to provide representation under the Criminal Justice Act (“the CJA”). The Court may approve attorneys for membership after receiving recommendations from the “Panel Selection Committee,” established pursuant to paragraph B of this Plan.
2. Size. The Court may fix, periodically, the size of the CJA Panel. The CJA Panel must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.
3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the bar of this Court, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the U. S. Sentencing Guidelines. All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.
4. Removal. Members of the CJA Panel serve at the pleasure of the Court and may be removed from the CJA Panel with or without cause. No attorney has a property interest in continued membership on the CJA Panel.
5. Suspension from Practice. Members of the CJA Panel whose privilege to practice law in any jurisdiction is suspended or revoked shall be removed automatically from the CJA Panel and must reapply for membership.

6. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Clerk. Completed applications shall be submitted to the Clerk who will transmit the applications to the Chairperson of the Panel Selection Committee.
7. Appointment of Non-Panel Attorney. Subsection (b) of the CJA provides, in part, that “[c]ounsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the Court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.” However, when the presiding judge or the chief judge if a judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA panel, is in the interest of justice, judicial economy, or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA Panel pro hac vice and appointed. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify him or her for admission to the CJA Panel in the ordinary course of panel selection.

B. PANEL SELECTION COMMITTEE

1. Membership. A Panel Selection Committee shall be appointed by the chief judge of the Court. The Committee shall consist of the Federal Public Defender, the Clerk, and one CJA Panel member from each division of the Court. The Chief Judge shall designate the chairperson. Any CJA Panel member of the Committee may be removed by the chief judge, or by the Court, with or without cause.
2. Duties.
 - a. The Panel Selection Committee shall meet at least once a year to consider applications and to recommend, for approval by the Court, those applicants best qualified to fill the vacancies.

At its annual meeting, the Committee shall also review the operation and administration of the CJA Panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management.

- b. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the CJA Panel, the Committee may solicit applications for the vacancies, convene special meetings to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval.

C. CJA TRAINING PANEL

The Panel Selection Committee may establish a “CJA Training Panel,” consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned to assist members of the CJA Panel in a “second chair” capacity or to misdemeanor cases or felony cases of minimal complexity. Training Panel members serving in a second chair capacity are not eligible to receive compensation for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

II. SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS

The Clerk shall maintain a current list of all attorneys included on the CJA Panel, with current office mailing addresses, e-mail addresses, and telephone numbers.

B. METHOD OF SELECTION

Appointments from the CJA Panel must be made on a rotational basis, subject to the Court’s discretion to make exceptions due to the nature and complexity of the case, an attorney’s experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.

Whenever possible, the Federal Public Defender must be appointed to represent qualifying defendants.

III. COMPENSATION – FILING OF VOUCHERS

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk. The Clerk, or his or her designee, shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures) and, if correct, shall forward the claim form for the consideration and action of the presiding judge.

